

Updated Overarching Issue Options for Stakeholder Consideration December 7, 2010

NOTE: The purpose of the overarching issue options is to assist Stakeholders in reaching consensus on the broader topics discussed during the November 30, 2010 meeting. Existing Exemptions/Waivers/Permitted Uses/Agricultural Performance Standards/Other Permitted Activities, as proposed in the current draft amendments, have been added per stakeholder request during the December 2, 2010 meeting.

Proposed Buffer Width/Exemptions/Waivers within the RPA Based on Stakeholder Discussion:

1. 100-foot Buffer in conjunction with the following Exemptions/Waivers:

- a. **Exempt** residential accessory structures (e.g., sheds) up to a cumulative total of 150 sf (inclusive of structures in the RPA at the time of adoption). (Issue #5)
- b. Allow disturbances up to 2,500 sf in the landward 50-feet by **Administrative Waiver** on lots that contain 50% or less RPA. (Issue #7/6)
- c. Allow disturbances up to 5,000 sf in the landward 50-feet by **Administrative Waiver** on lots that contain more than 50% RPA. (Issue #7/6)
- d. Allow disturbances up to 2,500 sf in the seaward 50-feet by **Administrative Waiver** in cases where an existing, principle structure was located in the RPA at the time of adoption. (Issue #32)
- e. **Exempt** private roads and driveways in the RPA, subject to the criteria outlined in the public road exemption. (Issue #14)
- f. **Exempt** stream and wetland restoration projects in the RPA, subject to local grading permit requirements. (Issue #15)
- g. **Exempt** approved drainfields and drainfield connections in the RPA. (Issue #16)
- h. Require a Minor Water Quality Impact Assessment (WQIA), as opposed to a Major WQIA, for docks and piers in the RPA, which are permitted water dependent uses. (Issue #34)

Considerations:

- 100-foot buffer removes 75% of sediment and 40% of nutrients - established by the State regs to achieve goal of “balanced economic development & water quality protection.”
- Consistent with surrounding jurisdictions (e.g., Fairfax & Prince William - early 1990’s).
- **Exempt** uses are allowed in the RPA and do not require the review of a water quality impact assessment or mitigation.
- **Administrative Waivers** require staff review and approval, review of a water quality impact assessment, and mitigation.
- Ordinance would allow submission of a Minor Water Quality Impact Assessment (WQIA) for the referenced waivers to avoid cost of consultant/engineer studies.
- Public hearing by the appointed Chesapeake Bay Review Board (or Board of Supervisors for legislative applications), and a Major WQIA would only be required in cases where disturbances in the landward 50-feet exceed the referenced thresholds, or where disturbances in the seaward 50-feet are proposed.

Existing Exemptions/Waivers/Permitted Uses/Agricultural Performance Standards/Other Permitted Activities within the RPA (as Proposed in Current Draft Amendments):

1. Exempt Uses:

- a. Water wells; passive recreation without construction facilities; pedestrian trails and appurtenant structures; and historic preservation and archaeological activities located within the RPA, provided that:
 - i. A grading permit is obtained for disturbances in excess of 2,500 sf.
 - ii. No more land shall be disturbed than is necessary to provide for the exempt use.
 - iii. A written request for exemption is filed with and approved by the Administrator (can be filed with applicable plans of development).
- b. Silvicultural activities, provided that such operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in "Virginia's Forestry Best Management Practices for Water Quality, Fourth Edition, July 2002," as amended, and as determined by the Virginia Department of Forestry.
- c. The construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads, and their appurtenant structures, in accordance with:
 - i. An erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation or Loudoun County.
 - ii. The exemption of public roads is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the RPA and minimize adverse effects on water quality.
- d. The construction, installation, operation, and maintenance of water lines, sanitary sewer lines including pump stations, natural gas lines, underground telecommunications and cable television lines and appurtenant structures owned, permitted, or both, by Loudoun County, the Loudoun County Sanitation Authority (Loudoun Water), an incorporated Town, or a regional service authority, provided that:
 - i. To the degree possible, the location of such utilities and facilities shall be outside RPAs;
 - ii. No more land shall be disturbed than is necessary to provide for the proposed utility installation and maintenance;
 - iii. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable State and Federal permits and designed and conducted in a manner that protects water quality; and
 - iv. A grading permit is obtained for disturbances in excess of 2,500 sf, where applicable.

2. Waivers:

- a. Administrative Waiver for the Loss of a Buildable Area
 - i. Allows encroachments into the Landward 50-feet of the buffer that do not exceed 10,000 sf of disturbance exclusive of the drainfield and driveway and shall not create more than 5,000 sf of impervious area exclusive of the driveway are the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
 - ii. Requires submission of a Water Quality Impact Assessment and, where practicable, establishment of a vegetated area equal to the area of encroachment into the Buffer Area elsewhere on the lot or parcel.
 - iii. Requires adherence to performance criteria, including the approval of a grading permit for disturbances greater than 2,500 sf.
- b. Administrative Waiver for Minor Additions
 - i. Allows encroachments into the Landward 50-feet of the buffer that do not exceed 2,500 sf disturbance/impervious cover for attached accessory structures (e.g., decks, additions).
 - ii. Requires the submission of a Water Quality Impact Assessment to assess water quality impacts and provide mitigation.
 - iii. Includes a performance standard of no increase in nonpoint source pollutant load.
 - iv. Approval is subject to the following findings:
 - 1. The requested waiver is the minimum necessary to afford relief;
 - 2. Granting the waiver will not confer upon the applicant any special privileges that are denied by this Chapter to other property owners who are subject to its provisions and who are similarly situated;
 - 3. The waiver is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality;
 - 4. The waiver request is not based upon conditions or circumstances that are self-created or self-imposed; and
 - 5. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the activity from causing a degradation of water quality.
 - 6. Other findings as appropriate.

3. Permitted Uses:

- a. A new or expanded water-dependent facility (e.g., water/sewer intakes and outfalls, marinas/docks, beaches, fisheries, storm drain outfalls, stream/wetland mitigation facilities), provided that:
 - i. It does not conflict with the Zoning Ordinance;
 - ii. It complies with the performance criteria;
 - iii. Any nonwater-dependent component is located outside of the RPA; and
 - iv. Access to the water dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

- b. Redevelopment, provided that: there is no increase in the amount of impervious cover, it is in the same physical location, there is no further encroachment into the RPA, and it conforms with Erosion and Sediment Control and Stormwater Management Requirements.
- c. Private roads and driveways may be constructed in or across the RPA, provided that:
 - i. The Administrator makes a finding that there are no reasonable alternatives to aligning the private road or driveway in or across the RPA;
 - ii. The alignment and design of the private road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and to minimize adverse effects on water quality; and
 - iii. The design and construction of the private road or driveway satisfy all applicable Performance Criteria (Section 1222.17) and County Codes.
- d. Flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed, provided that:
 - i. The Administrator determines that the proposed location of the facility is the optimum location to minimize encroachment in the RPA and to minimize adverse effects on water quality;
 - ii. The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
 - iii. All applicable permits for construction in Federal or State waters must be obtained from the appropriate Federal and State agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission prior to approval of a grading permit application.
 - iv. The facility is shown on a plan of development approved by the Administrator prior to construction; and
 - 1. Routine maintenance is performed on such facilities to assure that they continue to function as designed.
 - 2. A Best Management Practice that collects and treats runoff from only an individual lot or some portion of the lot shall not be located within a Resource Protection Area.

4. Agricultural Performance Standards:

- a. Agricultural activities, except structures, may be located in the Landward 50 feet of the buffer with the implementation of an erosion and sediment control or nutrient management Best Management Practice (BMP), as determined by the Loudoun Soil and Water Conservation District.
- b. Agricultural activities, except structures, may be located in the Landward 75 feet of the buffer with the implementation erosion and sediment control, nutrient management, and pest management BMPs approved by the Loudoun Soil and Water Conservation District.
- c. Within the full 100-foot Buffer Area adjacent to agricultural drainage ditches when at least one agricultural BMP addressing erosion and sediment control or

nutrient management, as determined by the Loudoun Soil and Water Conservation District, is being implemented on the adjacent land.

5. Other Permitted Uses:

- a.** Existing vegetation may be removed from the Buffer Area, subject to the approval of the Administrator, to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater for shoreline erosion control projects, subject to the standards outlined in the ordinance.